



Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimants

James W. Beahaw
Michelle Beahaw

vs.

Case #
90-03442

Name of Respondents

Kidder, Peabody & Co., Incorporated
Henry W. Custin

REPRESENTATION

For Claimant: George Dresser, Esq. and Thomas Flanagan, Esq. of Wilson
Bourgeois, Millott & Dresser.

For Respondent: Richard Kelley, Esq., in-house counsel.

CASE INFORMATION

Statement of Claim filed: December 03, 1990.
Claimants' Submission Agreement signed on: November 28, 1990.

Joint Statement of Answer filed by Respondents, Kidder Peabody & Co., Inc.
and Henry W. Custin, on: March 1, 1991.
Respondent, Kidder Peabody & Co., Inc., Submission Agreement signed on:
February 27, 1991.
Respondent, Henry W. Custin, Submission Agreement signed on: March 01, 1991.

HEARING INFORMATION

Hearing Date/Sessions: October 18, 1991 - Two Sessions.

Hearing Location: Boston, Massachusetts.

CASE SUMMARY

Claimants allege Respondent, Henry Custin, recommended that Michelle Beahaw,
who had no previous experience in the stock market, and James Beahaw, who had
limited investment experience, purchase in their cash account Empire of

America Federal Savings Bank ("E.O.A.") stocks. Claimants further allege that Custin later recommended that they purchase additional shares on margin and failed to disclose "house rules" regarding margin calculations. Claimants contend that Custin violated and misrepresented Respondent's, Kidder, Peabody & Co., Inc., house rules regarding margin and that Kidder wrongfully liquidated their holdings to meet the margin calls. Claimants argue that Respondents' actions resulted in the violation of Massachusetts Consumer Protection Act, M.G.L.c. 93A Sections 2 and 9

Respondents deny the allegations and deny liability. Respondents contend that James Beshaw had over twenty years experience trading stocks and bonds and that he invested in thinly capitalized and speculative stocks. Respondent allege that Claimants engaged in "free-riding" in violation of the New York Stock Exchange Rule 431. Respondent contend that Claimants were provided with a copy of Kidder Margin Guide which reflected Kidder's rule that of a 100% maintenance margin on stocks selling for less than \$3.00 per share. Respondents further allege that James Beshaw was immediately advised of the pending margin calls and James Beshaw instructed Mr. Custin to sell as much of E.O.A. to satisfy the margin call. Respondent also contend that they did not violate their house rules regarding margin maintenance. Respondent further contend that M.G.L. c.93A is inapplicable to controversies arising from the purchase or sale of securities.

RELIEF REQUESTED

Claimants request that the Panel award them \$39,267.27 in actual losses sustained, interest on the above amount, cost and reasonable attorney's fees and punitive damages equal to three times the Beshaw's actual losses.

Respondents request that the Statement of Claim be dismissed with prejudice and that they be awarded costs and expenses of this arbitration.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Both parties agreed to submit post hearing briefs in lieu of closing arguments.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determina-

tion as follows:

1. Respondents, Kidder, Peabody & Co., Inc. and Henry Custin, are hereby jointly and severally liable to Claimants and shall pay Claimants Thirteen Thousand Six Hundred and Fifty-Five Dollars and Seventy-Nine Cents (13,655.79); PPH 1/6/92
2. Respondents, Kidder, Peabody & Co., Inc. and Henry Custin, are jointly and severally liable to Claimants for interest and shall pay them Five Thousand Four Hundred Twenty-Three and Ninety Cents (5,423.90); PPH 1/6/92
3. The claim for attorney's fees is denied;
4. The claim for punitive damages is denied.

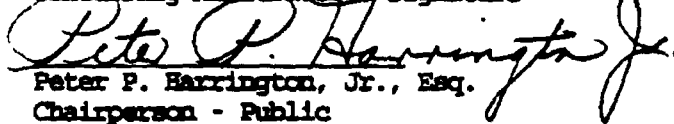
FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed and any deposits previously paid shall be applied to the fees assessed.

1. The NASD has received and shall retain the \$120.00 non-refundable filing fee previously paid by the Claimants;
2. The NASD has received and shall retain the \$400.00 hearing session deposit previously paid by the Claimants;
3. Claimants are assessed \$120.00 non-refundable filing fee;
4. Respondent, Kidder Peabody & Co., Inc., assessed \$800.00 in forum fees for two hearing sessions at \$400.00 per session. Respondent shall satisfy this assessment by reimbursing Claimants \$400.00 and remitting the balance to the NASD.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature


Peter P. Harrington, Jr., Esq.
Chairperson - Public

Date of Decision: January 17, 1992

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1. Respondents, Kidder, Peabody & Co., Inc. and Henry Custin, are hereby jointly and severally liable to Claimants and shall pay Claimants

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2. Respondents, Kidder, Peabody & Co., Inc. and Henry Custin, are jointly and severally liable to Claimants for interest and shall pay them

Five thousand four hundred twenty three and ninety cents. (\$5,423.90)

3. The claim for attorney's fees is denied;

4. The claim for punitive damages is denied.

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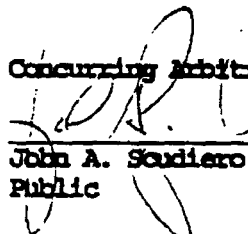
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John A. Scudiero
Public

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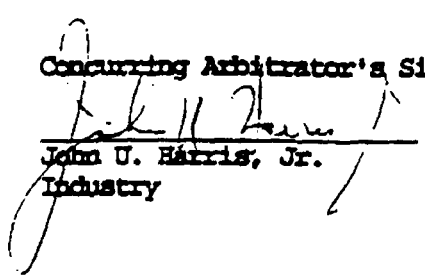
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Concurring Arbitrator's Signature


John U. Harris, Jr.
Industry

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